FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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March 31, 2009

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	
	:	Docket No. LAKE 2008-516
v.	:	A.C. No. 11-03054-145023
BIG RIDGE, INC.	:	

BEFORE: Duffy, Chairman; Jordan, Young, and Cohen, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2006) ("Mine Act"). On July 2, 2008, the Commission received from Big Ridge, Inc. ("Big Ridge") a motion by counsel seeking to reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

On April 1, 2008, the Department of Labor's Mine Safety and Health Administration ("MSHA") issued a proposed assessment that included penalties associated with 50 citations, totaling $259,795. According to MSHA records, Big Ridge received the assessment on April 8. On May 16, 2008, Big Ridge sent MSHA the assessment form that indicated the citations it wished to contest and a check for the amount of the uncontested penalties. Big Ridge states that its safety manager did not file the contest within 30 days because of "overwhelming business matters at the time" and that the failure to file was the result of "inadvertence or a mistake and miscommunication within the operator's organization." In a letter dated May 22, MSHA informed Big Ridge that its May 16 filing was untimely and that its hearing request was denied.

In response to Big Ridge's motion to reopen, the Secretary states that she does not oppose Big Ridge's request.

We have held that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessment forms that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) ("*JWR*"). In evaluating requests to reopen final section 105(a) orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure under which, for example, a party could be entitled to relief from a final order of the Commission on the basis of inadvertence or mistake. *See* 29 C.F.R. § 2700.1(b) ("the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure"); *JWR*, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Having reviewed Big Ridge's request and the Secretary's response, we conclude that Big Ridge's summary statement in its motion that it failed to timely file a contest because of "overwhelming business matters" and "miscommunication" does not provide the Commission with an adequate basis to justify reopening. Accordingly, we deny without prejudice Big Ridge's request.[1] *See, e.g., Eastern Associated Coal, LLC*, 30 FMSHRC 392, 394 (May 2008); *James Hamilton Constr.*, 29 FMSHRC 569, 570 (July 2007).

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Michael G. Young, Commissioner

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Robert F. Cohen, Jr., Commissioner

[1] In the event that Big Ridge chooses to refile its request to reopen, it should provide additional documentation to support its allegations.

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